



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/166521

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on July 14, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly determined that there was a BadgerCare Plus (BCP) overpayment in the amount of \$982.36 from December 1, 2014 through April 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner began receiving BadgerCare Plus (BCP) benefits May 1, 2014. The petitioner lived in Wisconsin.

3. On June 17, 2014 the agency sent the petitioner a notice stating that she would receive BCP benefits effective May 1, 2014. The notice further stated that she had to report within 10 days if she had a new address or change where she was staying.
4. On August 31, 2014 the petitioner arrived in Scotland. The petitioner backpacked through Europe until May 4, 2015 when she returned to Wisconsin. She received BCP benefits during this time period.
5. Prior to leaving for Europe the petitioner called the number on the back of her forward health card. She described her plans, and was told that she could maintain her BCP coverage.
6. The petitioner never changed her address. Her intent was to return to Wisconsin. She returned to Wisconsin on May 4, 2015, and remains in Wisconsin.
7. On May 26, 2015 the agency sent the petitioner a notice stating that she was overpaid BCP benefits in the amount of \$1,193.35 for the period from October 1, 2014 through April 30, 2015.
8. On June 10, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

The agency may recover incorrect MA or BCP benefit payments when a recipient engages in a misstatement or omission of fact to the program:

49.497 Recovery of incorrect medical assistance payments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s.49.665.
2. The failure of a Medical Assistance or BadgerCare recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits for the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted ...

Wis. Stat. §49.497(1). See also, Medicaid Eligibility Handbook, 22.2.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to recover benefits from the petitioner, the agency is the

moving party. The Department of Health Services acknowledged the principle laid down in *Hanson* in Final Decision ATI-40/87198 where then-Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case.

In order to be eligible for the BCP program, a person must be a Wisconsin resident. *BadgerCare Plus Eligibility Handbook (BCPH)*, §3.1. A person can be a Wisconsin resident, and be temporarily absent from the state. *BCPH*, §3.5. Once Wisconsin residency is established, a person retains that residency until he or she notifies the state that he or she no longer intend to reside in Wisconsin, another state determines the person is a resident in that state for Medicaid/Medical Assistance, or other information is provided that indicates the person is no longer a resident. *Id.* A temporary absence ends when another state determines the person is a resident there for Medicaid/Medical Assistance purposes. *BCPH*, §3.5.1.

The handbook does not specify a maximum amount of time that a person can be temporarily absent from Wisconsin while retaining BCP benefits. In fact students who are going to school in another state, but residents of Wisconsin can maintain BCP coverage when they are not physically present in Wisconsin. *BCPH*, §3.1. I note that when determining household composition, the manual states a child and that child's parent or caretaker relative can be in the same BC+ Test Group even when not living together if either is temporarily absent, provided: 1. The continuous absence is expected to be for no more than six months. *BCPH*, §2.4.2. However, the manual goes on to state that the IM agency may approve an extension of a child's temporary absence beyond six months when the caretaker relatives meet the Child Welfare Caretakers requirements. *Id.*

The issue is whether the petitioner was temporarily absent from Wisconsin. The policy and statutes support that the petitioner was temporarily absent from Wisconsin, and therefore eligible for BCP benefits. The petitioner always intended to return to Wisconsin. Not only did the petitioner testify that this was her intent, she in fact returned to Wisconsin following her trip. She never changed her address, and continued to receive mail at her Wisconsin address while traveling.

Although the agency stated there is a six month maximum time limit for a temporary absence, the manual does not support that the position. There is no question that the petitioner was a resident of Wisconsin when she applied for benefits. The policy section related to residency states that she maintains her residency until she notifies the state that he or she no longer intend to reside in Wisconsin, another state determines the person is a resident in that state for Medicaid/Medical Assistance, or other information is provided that indicates the person is no longer a resident. She always intended to reside in Wisconsin, and thus her Wisconsin residency never changed.

This is a unique case with a unique fact pattern. I understand the agency's discomfort in finding that the petitioner can spend eight months backpacking through Europe, and still be eligible for BCP benefits. As an ALJ I do not have any equitable power. The petitioner has technically met the residency requirements. In addition, the burden is on the agency to show that the petitioner was ineligible for BCP benefits during the overpayment period. The agency simply states that she was out of the country, and argues that this is different than just going to another state. There are no statutes or policy sections supporting this distinction.

There is a slight difference between the overpayment notice amount and the amount of overpayment stated at the hearing because the agency conceded one month of the overpayment prior to hearing. This is no longer an issue given that I have found there is no overpayment.

CONCLUSIONS OF LAW

The agency incorrectly determined that there was a BadgerCare Plus (BCP) overpayment in the amount of \$982.36 from December 1, 2014 through April 30, 2015.

THEREFORE, it is

ORDERED

That this case is remanded to agency with the instructions that the agency rescind the overpayment notice. The agency shall comply with this order 10 days from the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

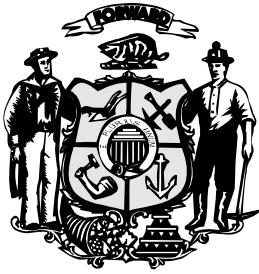
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of July, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 21, 2015.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability